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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2009-53

13 **ELIZABETH U. MUAN**

OAH No.

14 45 Park Groton Place  
San Jose, CA 95136

**A C C U S A T I O N**

15 Registered Nurse License No. 612681

Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation  
19 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
20 Department of Consumer Affairs.

21 2. On or about January 30, 2003, the Board of Registered Nursing issued  
22 Registered Nurse License Number 612681 to Elizabeth U. Muan (Respondent). The Registered  
23 Nurse License was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on August 31, 2010, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing  
27 (Board), Department of Consumer Affairs, under the authority of the following laws. All section  
28 references are to the Business and Professions Code unless otherwise indicated.

4. Section **2750** of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 652 of the Code provides:

Violation of this article in the case of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation of his or her license by the board by whom he or she is licensed, or if a license has been issued in connection with a place of business, then for the suspension or revocation of the place of business in connection with which the violation occurs. The proceedings for suspension or revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and each board shall have all the powers granted therein. However, in the case of a licensee of the State Department of Health Services, the proceedings shall be conducted in accordance with Section 110171 of the Health and Safety Code. In addition, any violation constitutes a misdemeanor as to any and all persons offering, delivering, receiving, accepting, or participating in any rebate, refund, commission, preference, patronage dividend, unearned discount, or consideration, whether or not licensed under this division, and is punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the imprisonment and fine.

7. Section 654.2 of the Code provides, in pertinent part:

(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to charge, bill, or otherwise solicit payment from a patient on

1 behalf of, or refer a patient to, an organization in which the licensee, or the licensee's immediate  
2 family, has a significant beneficial interest, unless the licensee first discloses in writing to the  
3 patient, that there is such an interest and advises the patient that the patient may choose any  
4 organization for the purpose of obtaining the services ordered or requested by the licensee.

5 . . .

6 8. Section 2761(a) of the Code provides that the Board may take disciplinary  
7 action against a licensed nurse for unprofessional conduct.

8 9. Title 45, Code of Federal Regulations, section 164.502, prohibits the use  
9 or disclosure of patient health information without the consent of the patient.

10 10. California Civil Code section 56.36 prohibits, and sets forth penalties for,  
11 any licensed person who knowingly and willfully obtains, discloses or uses medical information  
12 without written authorization from the patient.

### 13 COST RECOVERY

14 11. Section 125.3 of the Code provides, in pertinent part, that the Board may  
15 request the administrative law judge to direct a licensee found to have committed a violation or  
16 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
17 and enforcement of the case.

### 18 FIRST CAUSE FOR DISCIPLINE

#### 19 (Unprofessional Conduct)

20 12. Respondent is subject to disciplinary action under section 2761(a) in that  
21 she acted unprofessionally, as follows:

22 13. In 2005, Respondent worked as a Registered Nurse at O'Connor Hospital  
23 in San Jose, California.

24 14. While she was employed at O'Connor Hospital, Respondent took patient  
25 information from the hospital including, but not limited to, medical charts of individual patients  
26 and lists of patients with the identifying information pertaining to those patients. Respondent did  
27 not have permission, from the hospital or from the patients, to take these medical records.

28 15. Respondent used the information in the above-described medical records

1 to identify patients who were in need of home care. Respondent contacted these patients and  
2 offered to provide home care services to them at a reduced rate through Respondent's home care  
3 business. During 2005 and 2006, Respondent provided home health care to several of these  
4 patients through her home care business and billed them for her services.

5 **SECOND CAUSE FOR DISCIPLINE**

6 (Improper Solicitation and Referral of Patients)

7 16. Respondent is subject to disciplinary action under sections 652, 654.2 and  
8 2761(a) of the Code in that she charged, billed or otherwise solicited payment from patients, and  
9 referred patients to, an organization in which Respondent held a beneficial interest without first  
10 providing required disclosure in writing, as set forth above in paragraphs 13-15.

11 **PRAYER**


12 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
13 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

14 1. Revoking or suspending Registered Nurse License Number 612681, issued  
15 to Elizabeth U. Muan;

16 2. Ordering Elizabeth U. Muan to pay the Board of Registered Nursing the  
17 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
18 Professions Code section 125.3;

19 3. Taking such other and further action as deemed necessary and proper.

20 DATED: 9/8/08

21   
22 RUTH ANN TERRY, M.P.H., R.N.  
23 Executive Officer  
24 Board of Registered Nursing  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant  
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